IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 760 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JYOTSNA I. PATEL AND ANOTHER
Versus
STATE OF GUJARAT AND OTHERS

==========

Appearance :
MR MR ANAND for Petitioners.
MS FALGUNI PATEL, AGP for Respondents.
None for Respondent No. 4.

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 10/10/2006

ORAL JUDGMENT

By filing this petition, the petitioners have prayed that appropriate direction may be given to the respondents to continue them in service as lecturers in Accountancy and Commerce respectively on regular basis

and that their services may not be terminated.

This petition is pending before this Court since 1992. The petitioners have continued in service in view of interim order granted by this Court. Petitioner no.1 was appointed as Lecturer in Accountancy and petitioner no.2 was appointed as lecturer in Commerce. It is not in dispute that their appointments were on ad-hoc basis till GPSC selected candidate is available. Since the petitioners were apprehending termination, they have filed this petition with a prayer that their services should be regularized.

It is pointed out to the Court that petitioner no.1 is now regularly selected. Therefore, it is not necessary to examine her case on merits, however, it is open for her to make appropriate representation for getting the benefit of past service and if any such representation is made for getting the benefit of past service, it is for the Government to take appropriate decision on it after hearing petitioner no.1 and in accordance with law.

Learned advocate for the petitioner submitted that till candidate selected through GPSC is available, services of petitioner no.2 are required to be continued. He further submitted that petitioner no.2 is willing to go in a private granted college. He further submitted that in case the question of termination arises, principle of 'last come first go' should be followed.

Learned AGP submitted that so far as petitioner no.2 is concerned, in view of the judgement of Division Bench of this Court in **K.D.Vohra V.**

Kamleshbhai Gobarbhai Patel reported in **2003 (2) GLR 1342,** she cannot be continued on said post as her appointment was on ad-hoc basis. She further submitted that in view of the direction given by this Honourable Court (Coram:Jayant Patel, J.) in Special Civil Application No.5415/1997, services of petitioner no.2 would be continued till GPSC selected candidate is available or any other employee is transferred from other department to the department where petitioner is serving. She further submitted that even if occasion arises for termination of service of petitioner no.2, principle of 'last come first go' will be followed.

In response to the petition, affidavit-in-reply has been filed by Joint Director Commissioner of Higher Education Office, Gandhinagar. In paragraph 5 of the affidavit, it is stated as under :

> "I say and submit that the present petitioner Mrs.Jyotsnaben Ishwarbhai Patel is selected by G.P.S.C. by order dated 8-11-2001 and appointed as a lecturer at Government Commerce College, Maninagar, Ahmedabad. The petitioner Jyotiben K. Shah is appointed as ad-hoc lecturer and at present she is working in the Gujarat Arts & Commerce College (Evening), Ahmeabad as no G.P.S.C. selected candidate as posted vice her on her post."

I have heard both the learned advocates and I have also gone through the decision of learned Single Judge passed in Special Civil Application No.5415/1997. Considering the facts and circumstances of the case and considering the aforesaid judgements, prayer of petitioner no.2 to the effect that her services may be regularized, cannot be granted, however, this petition is disposed of with following directions.

(i) Services of petitioner no.2 may be continued till she is required to be replaced either by GPSC selected candidate or by any other suitable candidate by way of transfer.

(ii) In case the services of petitioner no.2 are required to be terminated, then principle of 'last come first go' should be followed.

(iii) It is pointed out by learned advocate for the petitioners that some similarly situated lecturers have already been sent to private granted colleges. If that be so and if Government has evolved any policy to send such lecturers in private granted college, case of petitioner no.2 also may be considered, however, it is for the Government to consider whether petitioner no.2 can be sent in a private granted college as a lecturer and this question is left to the discretion of the Government.

(iv) As per the judgement of the Division Bench, the Government shall consider to form a separate cadre and, thereafter, the Government may also consider whether petitioner no.2 can be accommodated in such cadre in light of the directions given by Division Bench of this Court.

In view of aforesaid directions, this petition is partly allowed. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar, J.)

/malek